

EXPLANATORY MEMORANDUM TO
THE CAPITAL REQUIREMENTS REGULATIONS 2013
2013 No. 3115

1. This explanatory memorandum has been prepared by the Treasury and is laid before Parliament by Command of Her Majesty.
2. **Purpose of the instrument**
 - 2.1 This instrument implements in part Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC (OJ no L176, 27 June 2013, p. 338) (the “capital requirements directive”).
 - 2.2 It also makes provisions necessary for the application and enforcement of Regulation (EU) No. 575/2013 of the European Parliament and of the Council (OJ no L176, 27 June 2013, p1¹) on prudential requirements for credit institutions and investment firms (the “capital requirements regulation”) in the United Kingdom.
3. **Matters of special interest to the Joint Committee on Statutory Instruments**
 - 3.1 None.
4. **Legislative Context**
 - 4.1 On 26 June 2013, the European Parliament and Council adopted a package of legislation known as “CRD4” which provides the framework for the authorisation and prudential supervision of banks in the EU. The CRD4 package comprises the capital requirements directive and the capital requirements regulation. The directive must be transposed into UK law by 31 December 2013 and must be applied from 1 January 2014. The regulation applies (with some exceptions) from 1 January 2014.
 - 4.2 Altogether, the Capital Requirements Directive 4 package is being transposed into UK law by means of:
 - these Regulations;
 - an Order which permits the PRA and FCA to use their powers under the Financial Services and Markets Act 2000 (c.8) (“FSMA”) to supervise and enforce the capital requirements regulation and any directly applicable regulations made under CRD4;
 - Regulations which transpose Article 89 (country-by-country reporting) of the capital requirements directive; and

¹ For corrigenda to both the Regulation and the Directive, see OJ no L208, 2 August 2013, p68 and p73, and for additional corrigenda to the Regulation see OJ no L321, 30 November 2013, p6..

- rules made by the Prudential Regulation Authority (“PRA”) and the Financial Conduct Authority (“FCA”).

4.3 The CRD4 package was submitted for scrutiny to the UK Parliament on 12th October 2011. It was cleared by the House of Commons European Scrutiny Committee on the 14th March 2012 and House of Lords European Scrutiny Committee on the 14th June 2012.

4.4 The package must be implemented by EU Member States by 1st January 2014.

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

6.1 The Financial Secretary to the Treasury, Sajid Javid MP, has made the following statement regarding Human Rights:

In my view the provisions of the Capital Requirements Regulations 2013 are compatible with the Convention rights.

7. Policy background

- *What is being done and why*

7.1 The financial crisis highlighted problems in banks’ risk management practices and the regulatory framework. Banks failed to recognise the limitations of the level and quality of their capital and liquidity resources to deal with losses in certain risk activities and in periods of extreme stress and market disruption. Information problems also contributed to the mispricing of risks by financial institutions, regulators and the capital markets. The problems ultimately led to the breakdown in the ability of banks to carry out their critical economic activities, constraining intermediation and economic growth.

7.2 The CRD4 package is the EU’s main response to the risk management and regulatory issues raised by the financial crisis. The package responds to the latest global standards on bank capital known as Basel III, and also introduces measures to enhance corporate governance and, in some areas improve the consistency of prudential standards across the EU through the creation of a Single Rule Book.

7.3 The provisions of CRD4 that make a considerable impact on business are being transposed into UK law by the PRA and FCA.

7.4 This instrument will implement a set of procedural and technical rules on how the regulators are to conduct some of their everyday operations. The instrument designates competent authorities for the purposes of the wider legal package, specifies how the PRA and FCA must exercise their regulatory functions in co-operation with overseas regulators and the European Supervisory Authorities, and makes provisions relating to the procedural aspects of certain discretions in the capital requirements regulation.

- ***Consolidation***

7.5 These Regulations do not substantially amend existing enactments, so consolidation is not merited.

8. Consultation outcome

8.1 Due to the technical nature of the majority of the provisions in this instrument, the Government has not consulted on these in detail. The European Commission did consult on the overall CRD4 package. The details of this consultation can be found at the below address:

http://ec.europa.eu/internal_market/bank/regcapital/legislation_in_force_en.htm

8.2 In relation to the macro-prudential provisions, the Government has already consulted on these powers when it published its consultation paper “The Financial Services Bill: the Financial Policy Committee’s macro-prudential tools” on 18 September 2012.

9. Guidance

9.1 The Treasury is not providing any guidance in relation to these Regulations as they largely impose obligations on the regulators.

10. Impact

10.1 The majority of the Regulations, in particular, the obligations concerning how regulators deal with each other will have no material impact on business or third sector bodies.

10.2 However, the macro-prudential provisions of the CRD4 package generally, on which the Government has already consulted will have an impact. An impact assessment has been published in relation to these provisions at http://www.legislation.gov.uk/ukia/2013/1156/pdfs/ukia_20131156_en.pdf.

11. Regulating small business

11.1 This legislation does not apply to small business.

12. Monitoring & review

12.1 A formal review of the Regulations is inappropriate as they deal predominantly with the way the PRA and FCA exercise their regulatory functions in concert with overseas regulators and European Supervisory Authorities, as required by the capital requirements directive. However, it is expected that the PRA and FCA will keep the Treasury apprised of any issues the Regulations might raise in this regard. The Commission is required to review a number of areas of the capital requirements directive during the first three years of its application and may bring forward further legislative proposals relating to these areas.

13. Contact

- 13.1 William Lacey at Her Majesty's Treasury Tel: 020 7270 4637 or email: William.Lacey@hmtreasury.gsi.gov.uk can answer any queries regarding the instrument.